

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

**ARTESIA SPRINGS, LLC,
HOD ENTERPRISES, L.P., and
BBB WATER, INC.,**

PLAINTIFFS,

V.

**DS WATERS OF AMERICA, INC., and
PRIMO WATER CORPORATION,**

DEFENDANTS.

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CIVIL ACTION NO.

5:14-cv-00791

DEFENDANT'S NOTICE OF REMOVAL

Defendant Primo Water Corporation (“Primo”) files Defendant’s Notice of Removal pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 and hereby removes this action from the District Court of Bexar County, Texas, Cause No. 2014CI12517, to the United States District Court for the Western District of Texas, San Antonio Division.

I. PRELIMINARY STATEMENT

By filing this Notice of Removal and removing this action to federal court, Primo does not concede that the District Court for the Western District of Texas, San Antonio Division, is the proper venue for this action, nor is the act of removal intended to act as a waiver of Primo's right to challenge the propriety of venue as

improper, inconvenient, or otherwise. Further, by act of this removal Primo does not waive any defenses it may have, including challenges to process and satisfaction of all conditions precedent to suit or venue, or any contractual rights Primo may have as a result of agreements with Plaintiffs, including the right to invoke a mandatory forum-selection clause, mediation, or binding arbitration.

II.

INTRODUCTION

1. Plaintiff Artesia Springs, LLC (“Artesia”) is a Texas limited liability company with its principal place of business in Texas. On information and belief, all members of Artesia are domiciled in and are citizens of Texas. For purposes of diversity of citizenship, Artesia is a citizen of Texas, and is not a citizen of Delaware, Georgia, or North Carolina.

2. Plaintiff HOD Enterprises, L.P. (“HOD”) is a Texas limited partnership with its principal place of business in Texas. On information and belief, all partners of HOD are domiciled in and are citizens of Texas. For purposes of diversity of citizenship, Plaintiff HOD is a citizen of Texas and is not a citizen of Delaware, Georgia, or North Carolina.

3. Plaintiff BBB Water, Inc. (“BBB”) is a for-profit corporation incorporated in the state of Texas with its principal place of business in Texas. For purposes of diversity of citizenship, BBB is a citizen of Texas and not a citizen of Delaware, Georgia, or North Carolina.

4. Primo is a for-profit corporation incorporated in the state of Delaware with its principal place of business in Winston-Salem, North Carolina. For purposes of diversity of citizenship, Primo is a citizen of Delaware and North Carolina and is not citizen of Texas.

5. DS Waters of America, Inc. (“DS Waters”) is a for-profit corporation incorporated in the state of Delaware with its principal place of business in Atlanta, Georgia. For purposes of diversity of citizenship, DS Waters is a citizen of Delaware and Georgia and is not a citizen of Texas.

6. On August 8, 2014, Plaintiffs Artesia, HOD, and BBB (collectively “Plaintiffs”), filed suit in the 166th Judicial District Court of Bexar County, Texas, styled *Artesia Springs, LLC, HOD Enterprises, L.P., and BBB Water, Inc. v. DS Waters of America, Inc., and Primo Water Corporation*, Cause No. 2014CI12517 (the “State Court Action”).

III.

COMPLIANCE WITH REMOVAL REQUIREMENTS

7. Both Defendants were served with suit on August 25, 2014. Primo files this notice of removal within the 30-day time period required by 28 U.S.C. § 1446(b).

8. As required by 28 U.S.C. § 1446(a), a copy of Plaintiffs’ Original Complaint, process documents, and the docket sheet in the State Court Action are attached to this Notice as **Exhibit A** and incorporated herein by reference.

9. Assignment to this Court is proper because the State Court Action was pending in the 166th Judicial District Court of Bexar County, Texas. Under 28 U.S.C. § 1441(a), venue of the removed action is proper in this Court for purposes of removal only because it is in the district and division embracing the place where the State Court Action is pending. However, Primo does not concede by act of removal that venue in this Court is proper for any purpose other than removal. Primo contends, as to be demonstrated in a subsequent motion, that transfer of this matter to the United States District Court for the Middle District of North Carolina is required should the parties not be ordered by this Court to attend binding arbitration.

IV. BASIS FOR REMOVAL

A. Diversity of Citizenship

10. Removal is proper because there is complete diversity of citizenship between the parties. 28 U.S.C. § 1332(a). Plaintiff Artesia is a citizen of Texas, Plaintiff HOD is a citizen of Texas, and Plaintiff BBB is a citizen of Texas. Defendant Primo is a citizen of Delaware and North Carolina, and Defendant DS Waters is a citizen of Georgia and Delaware. There is and was, at all times relevant to Defendant's Notice of Removal (including the time of filing of the suit, service of Plaintiffs' Petition, and the filing of this Notice), complete diversity of citizenship between Plaintiffs and Defendants.

B. Amount In Controversy

11. Additionally, the amount in controversy, exclusive of costs and interest, exceeds \$75,000. 28 U.S.C. 1332(a). Plaintiffs seek damages from Defendants based on allegations of breach of contract, tortious interference with a contract, fraud, and conspiracy, among others. (Ex. A, Plaintiffs' Petition ¶¶ 6, 15-34.) Plaintiffs' Petition alleges that the amount in controversy is "in excess of \$1,000,000." (Ex. A, Plaintiffs' Petition ¶ 6)

**V.
NOTICE TO STATE COURT**

12. As required by 28 U.S.C. § 1446(d), Primo is filing with the Clerk of the District Court of Bexar County, Texas, a true and correct copy of this Defendant's Notice of Removal and all exhibits, thus giving notice that such court may proceed no further with respect to this action. Primo will promptly give Plaintiffs and DS Waters written notice of the filing of Defendant's Notice of Removal as required by 28 U.S.C. § 1446(d).

**VI.
CONCLUSION**

Removal is proper because this Court has diversity jurisdiction under 28 U.S.C. § 1332 as there is complete diversity of citizenship between Plaintiffs and Defendants and the amount in controversy exceeds \$75,000. For these reasons,

Primo removes the suit to the United States District Court for the Western District of Texas, San Antonio Division.

Respectfully submitted,

/s/ Merritt Clements

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served on all counsel listed below on this 5th day of September, 2014 via the court's ECF filing system.

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